

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 18 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

JOSEPH DIBEE,

Defendant-Appellee.

No. 19-30290

D.C. No. 6:06-cr-60011-AA-1
District of Oregon,
Eugene

ORDER

Before: THOMAS, Chief Judge, BERZON and BRESS, Circuit Judges.

This is an appeal from the district court's order releasing appellee pending trial. We have jurisdiction pursuant to 18 U.S.C. § 3145(c) and 28 U.S.C. § 1291. The Court has reviewed appellant's Rule 9(a) memorandum and appellee's motion before the district court and finds further briefing unnecessary.

The district court granted appellee's motion for pre-trial release, finding that the government had failed to meet "its clear and convincing burden." However, the government argued that appellee should be detained as a flight risk, and the lower, preponderance of the evidence, standard applies to that ground. *See United States v. Motamedi*, 767 F.2d 1403, 1406-07 (9th Cir. 1985). Additionally, the district court failed to recognize that a rebuttable presumption in favor of detention applies to this case. *See* 18 U.S.C. § 3142(e)(3)(C); *see also United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008). Finally, the district court failed to make

sufficient findings regarding appellee's potential flight risk or danger to allow meaningful appellate review. *See United States v. Wheeler*, 795 F.2d 839, 841 (9th Cir. 1986) (order).

In light of these errors, we vacate the district court's order releasing appellee and remand with instructions for the district court to reconsider appellee's motion consistent with this order.

Appellant's emergency motion (Docket Entry No. 3) for a stay of the district court's order releasing appellee is granted. The district court shall order appellee detained while it reconsiders appellee's motion for release.

Appellant's motion to expedite the case (Docket Entry No. 4) is denied as moot.

The mandate shall issue forthwith.

VACATED and REMANDED.